IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10472 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARESHKUMAR H DAVE

Versus

REGIONAL TRANSPORT OFFICER

Appearance:

MR DK NAKRANI for Petitioner

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/10/2000

ORAL JUDGEMENT

Rule. Mr KT Dave, learned AGP waives service of Rule for the respondent.

2. The petitioner's grievance is that the petitioner's application being N.T. form for an order regarding non-use of the petitioner's motor vehicle bearing registration No. GJ-5Z-9009 has not been processed in light of the principles laid down by the

Hon'ble Supreme Court in State of Gujarat vs. Kaushikbhai K. Patel (Civil Appeal No. 198/99) reported in AIR 2000 SCW 2337 wherein the Hon'ble Supreme Court has held that the authorities are bound to consider the case of the vehicle owner by considering whether the vehicle was actually used on road or not during the relevant period, without considering as to whether the non-user was for reasons beyond the control of the owner of the vehicle.

3. Mr KT Dave, learned AGP appearing on behalf of the respondent submits that the authority is prepared to consider the petitioner's N.T. forms and to process the same in light of the statutory provisions as they stand today.

4. Having heard the learned counsel for the parties, it appears that there is considerable substance in the aforesaid grievance made on behalf of the petitioner that the petitioner's application has not been processed in light of the principles laid down by the Hon'ble Supreme Court in the above case. The said decision has been rendered by the Hon'ble Supreme Court after interpreting the provisions of the Constitution and the said binding decision of the Apex Court cannot be set at naught, by making a reference to some statutory provisions which do not appear to have incorporated the principles laid down by the Hon'ble Supreme Court upon interpretation of the relevant Constitutional provisions.

5. In view of the above, the respondent is directed to consider the N.T. forms submitted by the petitioner by deciding the question whether the vehicle in question was actually used on road or not during the relevant period, without considering as to whether the non-user was for reasons beyond the control of the owners of the vehicles. This direction shall be complied with within one month from today. A copy of this order shall be given to Mr K.T. Dave, learned AGP.

6. It is clarified that pendency of the aforesaid matter before the RTO authority shall not preclude the authority from accepting the motor vehicles tax from the petitioner for the months October & November, 2000. The respondent authority shall accept the motor vehicles tax for these two months and in the meantime, the respondent authority shall decide the petitioner's application regarding non-use during the months between May, 2000 and September, 2000.

Rule is made absolute to the aforesaid extent

with no order as to costs.

Direct Service is permitted.

October 17, 2000 (M.S. Shah, J.)
sundar/-